



Office of
the Schools
Adjudicator

Determination

Case references: ADA3980 and ADA4072

Objector: A member of the public

Admission authority: Girls' Learning Trust for Nonsuch High School for Girls and Wallington High School for Girls, Sutton

Date of decision: 03 August 2022

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2023 determined by Girls' Learning Trust for Nonsuch High School for Girls and Wallington High School for Girls, London Borough of Sutton.

I have also considered the arrangements in accordance with section 88I(5) and find there is another matter in the arrangements for Nonsuch High School for Girls which does not conform with the requirements relating to admission arrangements in the way set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements for Nonsuch High School for Girls must be revised by 28 February 2023.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a member of the public (the objector) about the admission arrangements (the arrangements) for Nonsuch High School for Girls and Wallington High School for Girls (the schools), both selective academy schools for girls aged 11 to 18, for September 2023. The objection is to an aspect of the tests for selection.

2. The local authority for the area in which Wallington High School for Girls is located is the London Borough of Sutton. Nonsuch High School for Girls was historically maintained by the London Borough of Sutton although it is, in fact, on the opposite side of a road that defines the boundary of the local authority and therefore is in Surrey. The London Borough of Sutton (the LA) retains the responsibilities of a local authority in respect of this academy school. The LA is a party to this objection. Other parties to the objection are Girls' Learning Trust (the trust), which is the multi-academy trust responsible for both schools, the schools and the objector.

Jurisdiction

3. The terms of the Academy agreement between the multi-academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy schools are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the schools, on that basis. The objector submitted her objection to these determined arrangements on 14 May 2022. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

5. The documents I have considered in reaching my decision include:

- a. a copy of the minutes of the meeting of the academy trust at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 14 May 2022 and subsequent correspondence;
- d. the trust's responses to the objection and to my requests for further information, including the allocation of places for admission in September 2021 and September 2022 and details of the selection tests;
- e. the LA's response to the other matter relating to Nonsuch High School for Girls and to my request for further information; and
- f. information available on the websites of the schools and the Department for Education's website, "Get Information About Schools".

The Objection

6. The objector says that one aspect of the tests for selection used by the schools, namely the Nonsuch and Wallington Second Stage Entrance Examination (NWSSEE) English writing test, does not meet the requirement in paragraph 1.31 of the School Admissions Code (the Code) that “Tests for all forms of selection must be clear, objective, and give an accurate reflection of the child’s ability or aptitude”.

Other Matter

7. An oversubscription criterion within the arrangements for Nonsuch High School for Girls gives priority to pupils resident in the London Borough of Sutton. It appeared to me that this criterion is in breach of the “Greenwich judgment” (R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469) as it discriminates against pupils in relation to admission to the school simply because they reside outside the local authority area in which the school is situated.

Background

8. The two schools are the only single-sex selective schools for girls in the London Borough of Sutton. Both schools have a Published Admission Number (PAN) of 210 for admission in September 2023. They use the same tests for selection, which are in two parts. In order to be eligible for a place, applicants must pass both parts of the selection tests. The oversubscription criteria in their admission arrangements are very similar, with one major difference. They can be summarised as follows:

- a. Looked after children and previously looked after children.
- b. Places allocated on the basis of the highest scores in the selection tests (85 at Nonsuch and 100 at Wallington).
- c. Up to 35 places for “children in receipt of Pupil Premium” on the basis of highest scores in the selection tests.
- d. Up to 110 places for children living within the school’s catchment area, in order of highest score.
- e. (Nonsuch only) 15 “ring-fenced” places for “those whose permanent place of residence...is such that their parent/carer pays/would pay their Council Tax to the London Borough of Sutton”, in order of highest score.
- f. Any places that remain, in order of highest score.

Applicants qualifying under criteria a) and c) are considered eligible if their score in the selection tests is no more than ten per cent below the pass marks in both parts.

9. The two parts of the selection test are the “Selective Eligibility Test” (“the SET”) and the “Nonsuch and Wallington Second Stage Entrance Examination” (“the NWSSEE”). The SET consists of multiple choice tests in English and Mathematics. Girls who achieve “at least the minimum qualifying threshold” in the SET are invited to sit the NWSSEE, which also comprises two tests, one in Mathematics and one in English, neither of which is multiple choice. Candidates must pass both parts of the NWSSEE to be eligible for a place. Scores from the NWSSEE are added to half of the aggregate mark achieved in the SET to create total scores, which are used to create ranked lists.

10. The schools are heavily oversubscribed. For admission in September 2022, a total of 2628 girls sat the SET. Of these, 1040 also sat the NWSSEE, which was passed by 954 girls.

Consideration of Case

The arguments of the objector and the trust’s responses

11. The objection relates specifically to the English test within the NWSSEE. This is a writing test; candidates write an essay on a prescribed subject. The objector argues that the test does not meet the requirements of paragraph 1.31 of the Code. She says that “The requirements of clarity and objectivity are unconditional and cover the whole test process, including test arrangements and marking arrangements.”

12. In respect of the Code’s requirement for clarity, the objector draws attention to the fact that the trust does not share the mark scheme for the English test with external parties at any stage. She considers that this breaches the Code because, “In essence, all applicants will be asked to write their English Test against a set of partially concealed requirements.”

13. With respect to objectivity, the objector makes two key points. First, drawing on information received following a Freedom of Information request, she explains that examiners marking the tests are not required to leave any comments or notes on the applicants’ pieces of writing. This, she says, means that there is no evidence that the mark scheme has been applied consistently or with rigour. Second, the objector criticises the trust’s process for moderating the marking of papers, which involves a second examiner checking a random sample of papers. The second examiner is not required to leave comments or notes. This, the objector says, makes it impossible to audit both how many papers were moderated and whether the second examiner used the “complete list of marking criteria.” Therefore, in the objector’s view, the trust cannot claim to have a rigorous moderation process.

14. The objector sums up her argument that the Code’s requirement for objectivity is breached in this way:

“the admission arrangement process as developed by the GLT for the 2023 Academic Year creates a grey area for potential misconduct and such misconduct would be covered up by the same flawed GLT’s admission arrangements.

The GLT's trust in their examiners has to be replaced with a rigorous process to ensure objectivity of their admission arrangements.”

15. In response to the objection, the Chief Executive (the CEO) of the trust emphasises the expertise of the two members of staff who design and mark the NWSSEE English paper. Both have been heads of department in selective schools and are examiners for public exams, one as an exam board team leader. They are therefore well-versed in procedures for quality assurance and moderation. The CEO explains that the English paper and mark scheme are based on the National Curriculum for Key Stage 3. On the first day of marking work together, each examiner marks a cross-section of approximately 40 scripts, which are moderated by the other. There is liaison during the marking period if “non-standard problems” arise. A further sample is moderated at the end of the marking period. The CEO continues,

- “There have been instances when moderated marks have been out by 1 to 2 marks. As is standard for GCSE and A level practice, this is deemed to be within acceptable tolerance as the papers are marked out of 40.
- Comments are not made but a symbol is used to highlight good practice or areas for concern.”

16. The objector argues that the procedure for quality assurance, as outlined by the CEO, is “unequivocally subjective.” She says,

“Since the examiners never leave any comments or notes, it is impossible to prove objectively that they ever read these essays, not to mention any efforts to mark them against the concealed list of marking criteria.”

17. She also points out that the trust does not collect information from the examiners on how many papers have been selected for further checking and asks, “how can they claim and prove it is happening altogether?” She concludes,

“I appreciate that the GLT has every confidence and trust in their examiners, unfortunately trust is purely subjective. Objectivity requires evidence.”

18. Finally, the objector mentions that for admission in 2021, the trust offered a review service to those who had not achieved the pass mark in either or both of the NWSSEE papers. Of 45 English papers that were reviewed, the marks were changed (either increased or decreased) in 27 of them. In six cases, this meant that an applicant who had initially failed the NWSSEE was deemed to have passed. The objector comments,

“The only change the GLT decided to implement for the 2022 Academic Year following the disastrous remarking in the previous year, was to conceal this problem by not allowing any remarking of the English Tests.”

19. I asked the CEO why the review service was not available in 2022 and is not mentioned in the 2023 arrangements. She explained that, for admission in 2021,

“the senior leader who oversaw the Review service changed and the usual tolerance process was not applied, resulting in a number of English marks being changed even where the marking was out by one mark... Following this incident, and realising that no other selective school in our area offered such a service, we decided that we would no longer offer it. It has never been part of our Admissions Policy.”

20. The objector responded to this explanation as follows:

“The GLT’s blind trust in their examiners already led to the self-confessed 60% of wrong English test marks back in 2020 but the GLT decided to sweep all dust under the carpet instead of fixing the obvious problem. **They still intend to use the same fraudulent Admissions policies for the English Test for the 2023 Academic Year.**” (Objector’s emphasis).

Consideration of compliance with the Code

21. Paragraph 1.31 of the Code imposes three requirements in respect of the use by admission authorities of tests for selection. First, the tests must be “clear”, second, they must be “objective” and third, they must “give an accurate reflection of the child’s ability or aptitude.” The objector argues that the first two of these requirements is not met in the arrangements for admission to the schools in September 2023. I shall consider these requirements, and the third, in turn.

22. The objector says that the NWSSEE English writing test is unclear and that to address this the trust should “communicate a complete list of requirements for the 2023 Academic Year English Test without compromising the GLT’s confidential marking approach.” The CEO drew my attention to the websites of the schools which, in an extensive section on frequently asked questions about the NWSSEE, provide some sample questions and notes about the English test. The sample questions consist not only of topics for the applicants’ essays (for example, “The best birthday party ever”) but also include an indication of some of the matters that will be taken into account, such as “sentence structures”, “use of paragraphs” and “descriptive language.” A second document on the websites, entitled “NWSSEE notes”, explains that the piece of writing should address one of four “triplets”. The triplet would depend on the nature of the writing task; examples include “argue, persuade and advise” and “explore, imagine and entertain.”

23. In my view, there are two aspects to the requirement for clarity in a test of this sort: first, there should be no doubt about what the candidates are expected to do and second, what is being tested should be made sufficiently clear in order to enable them both to prepare for the tests and to respond appropriately during the test itself. I am in absolutely no doubt that the first aspect of the requirement for clarity is met by the NWSSEE English writing test. The sample questions include not just the titles of the pieces of writing but an indication of how candidates are expected to approach the task. With regard to the second aspect, I consider that the sample questions and the further information on the websites give helpful guidance about what is being assessed. It is stated that the tests “broadly match” the National Curriculum, which is readily available and, as the trust says, will have been “commonly covered” by applicants at their primary schools. I do not consider that the

trust needs to provide any further information in order to meet the requirement that the test is “clear”.

24. The objection about the objectivity of the test relates to the way applicants’ papers are marked. The objector’s argument is that there is insufficient evidence that the test has been marked properly (or, indeed, that the papers have been read at all) and this means that it cannot be stated with certainty that the marking was objective.

25. I consider the marking process would fail the test of objectivity if it were obvious that the examiners were allowing bias or personal preferences to distort their judgments as to the quality of the papers they are marking. I have not been provided with any evidence at all that this might be the case. On the contrary, the criteria against which essays are judged do, in my view, require objective judgments to be made.

26. Therefore, I am in no doubt that the NWSSEE English writing test is an objective test. It may be that physical marks on the papers would provide some explanation as to how the markers arrived at their objective judgments. I understand the objector’s concern in this respect, but I do not agree that the lack of comments or other evidence of the marking process calls into question its objectivity. It certainly does not mean that the tests are “unequivocally subjective” as the objector suggests. The information provided by the trust indicates that the examiners have considerable experience of marking tests of this nature. I do not consider that the test fails the Code’s requirement of objectivity.

27. The third requirement of paragraph 1.31 is that tests for selection must “give an accurate reflection of the child’s ability or aptitude.” Although the objector does not specifically mention this requirement, her reference to the outcome of the review service for admission in 2021 is of relevance in this respect. It does appear on face value to be a matter of concern that this service led to a change in the marks for the English test for 60 per cent of the papers that were reviewed. However, I take into account the CEO’s explanation that unfortunately “the usual tolerance process was not applied.” It is the case that, unlike in mathematics, for example, where generally an answer will either be right or wrong, examiners’ judgments of a piece of writing can vary by small amounts. This is always a feature of subjects such as English and history where two different objective assessments of a piece of writing may lead to slightly different views as to its quality.

28. The moderation process is designed to ensure that there are no cases where there are errors in marking that mean that the test does not give an accurate reflection of the applicant’s ability. I am satisfied that the procedures for quality assurance, as outlined by the CEO (see paragraph 15 above), are fit for purpose in this respect. The objector again argues that the absence of physical evidence compromises trust in this process. Again, I understand the concern but I do not agree that this means that what the trust says it does is not being carried out properly. I share the objector’s disappointment that the review service is no longer offered. Nevertheless, it is my view that the trust takes appropriate steps to ensure that the English writing test gives an accurate reflection of applicants’ abilities and its arrangements comply with the third requirement of paragraph 1.31.

29. Before continuing, I should make reference to the objector's claims, made in a number of her responses, that the trust's use of the NWSSEE English test is "fraudulent" and that a deliberate attempt was made to deceive me, with regard to the outcome of the review of English papers in 2020/21. I reject these claims and regard the objector's language as intemperate. While it may be appropriate to argue that a more obviously robust system of quality assurance should be applied to the marking of the tests, it is completely wrong to suggest that the trust was involved in any form of fraud. Similarly, the CEO accepted that she had misunderstood information from the admissions department at the school about the number of applicants who moved from "fail" to "pass" following the review of English papers; when the discrepancy was drawn to her attention, she promptly provided me with accurate data. I am absolutely convinced that there was no question of deceit. In any event, I was already aware of the correct information as it had been provided to me by the objector.

30. I consider that the NWSSEE English test meets the requirements of paragraph 1.31 of the Code. I do not uphold the objection.

Consideration of Other Matter

31. A representative of the LA responded to my concern that the "ring-fencing" of 15 places in the arrangements for Nonsuch High School for Girls exclusively for residents of the London Borough of Sutton contravened the Greenwich judgment. He explained that the PAN of the school was increased in 2015 as part of an expansion programme that included all schools in the borough. The 15 ring-fenced places for Sutton residents were incorporated because,

"As part of the planning for the increase in PAN, it was understood there were Sutton girls who were of the required selective ability, but were not eligible for places due to the high demand of out-borough applicants; simply increasing PAN within the pre-existing criteria would not have impacted on the basic need requirements for the borough."

32. The LA argues that the change in PAN provided additional places "and there was no reduction in the number of places accessible to out-borough residents and they have therefore not been disadvantaged." The response continues,

"The impact of this had therefore not been to restrict or reduce access to those resident outside of Sutton. It should also be noted that the 'open' places are higher criteria in the admissions policy, therefore Sutton residents are not receiving priority for places at the school and those living outside of Sutton are not facing any discrimination."

33. I understand the LA's reasons for wishing to ring-fence the additional places and note that the proportion of pupils at Nonsuch High School for Girls who live outside the borough is significantly higher than the average for all schools in the LA area. For example, in Year 7 in 2020, 48 per cent of the school's roll lived outside the borough, compared with

32 per cent across all schools. The location of the school, right on the edge of the LA area (technically, just outside it), will contribute to this effect, particularly as its catchment area is defined by a circle of 5.25 kilometres radius from the front door of the school.

34. Notwithstanding the LA's reasons for reserving the 15 places for residents of Sutton and the positioning of these places within the oversubscription criteria, it remains the case that these places are reserved for children resident in Sutton. The places are not available to children living outside the boundaries of the borough and therefore such children are discriminated against in respect of obtaining one of these places for precisely the reason that the Greenwich judgment forbids. The fact that there was no reduction of places for children living outside Sutton when the 15 ring-fenced places were added in 2015 does not remove that discrimination.

35. The location of the school, just outside the borough boundary, is not, in my view, of relevance in this respect. Although it is an academy, the school is for admission and other purposes, a "London Borough of Sutton school." The use of the boundary of that borough as an oversubscription criterion means that it contravenes the Greenwich judgment.

36. Therefore, I find that this oversubscription criterion (reference 5.2.5 in the arrangements) breaches the requirements relating to admissions and must be revised or removed. I recognise that the trust and the LA will need to discuss the implications of this finding and, probably, consult on alternative criteria. It is for the admission authority and not for me to decide what changes to make. However, for the avoidance of doubt, I wish to place on record that a designated area that would not breach the Greenwich judgment is one approach the trust could consider. In order to give sufficient time for a considered response, it would not be appropriate to require a change to the arrangements for admission in September 2023. I determine that the arrangements for Nonsuch High School for Girls must be revised by 28 February 2023, that is, the last date for determining arrangements for admission in September 2024.

Summary of Findings

37. The second stage selection test in English is clear, as what is required of applicants and the broad basis of its assessment are set out plainly and are readily available. Although the use of markers' comments might be helpful, the ways in which papers are marked and moderated are objective, so that as accurate a reflection as possible of a child's ability is given. The requirements of paragraph 1.31 of the Code are met. I do not uphold the objection.

38. An oversubscription criterion in the arrangements of Nonsuch High School for Girls, ring-fencing 15 places for residents of the London Borough of Sutton, is in breach of the Greenwich judgment.

Determination

39. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2023 determined by Girls' Learning Trust for Nonsuch High School for Girls and Wallington High School for Girls, London Borough of Sutton.

40. I have also considered the arrangements in accordance with section 88I(5) and find there is another matter in the arrangements for Nonsuch High School for Girls which does not conform with the requirements relating to admission arrangements in the way set out in this determination.

41. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements for Nonsuch High School for Girls must be revised by 28 February 2023.

Dated: 03 August 2022

Signed:

Schools Adjudicator: Peter Goringe